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23 RICHARD OWEN

24 UNITED STATES DISTRICT COURT  
25 NORTHERN DISTRICT OF CALIFORNIA

26 RICHARD OWEN,

27 Plaintiff,

28 vs.

CITY OF PINOLE; CITY OF PINOLE  
POLICE OFFICER BRECKENRIDGE,  
individually, and DOES 1 through 40,

Defendants.

**Case No.: 16-cv-06131 - SK**

**STIPULATION AND[PROPOSED]  
PROTECTIVE ORDER FOR LITIGATION  
HIGHLY SENSITIVE CONFIDENTIAL  
INFORMATION**

1. LIMITATIONS

The parties hereby “stipulate” to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

The parties believe that the information claimed by Defendants – or characterized by Defendants – as confidential, proprietary, or private information likely to be produced in this action consists of, among other things, records in police officer personnel files and internal affairs files relating to the individual Defendants. Defendants are unwilling to produce highly sensitive materials in their personnel files, nor information characterized by Defendants as “confidential official information”, without a protective order entered by this Court.

The parties seek a counter-entered protective order governing the production of this confidential information. The production and handling of information produced pursuant to the Court’s order will be governed by the following terms of this protective order.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House

1 Counsel (as well as their support staff).

2 2.4 Designating Party: a Party or Non-Party that designates information or  
3 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”.

4 2.5 Disclosure or Discovery Material: all items or information, regardless of  
5 the medium or manner in which it is generated, stored, or maintained (including,  
6 among other things, testimony, transcripts, and tangible things), that are produced or  
7 generated in disclosures or responses to discovery in this matter.

8 2.6 Expert: a person with specialized knowledge or experience in a matter  
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
10 expert witness or as a consultant in this action.

11 2.7 Non-Party: any natural person, partnership, corporation, association, or  
12 other legal entity not named as a Party to this action.

13 2.8 Outside Counsel of Record: attorneys who are not employees of a party  
14 to this action but are retained to represent or advise a party to this action and have  
15 appeared in this action on behalf of that party or are affiliated with a law firm which has  
16 appeared on behalf of that party.

17 2.9 Party: any party to this action, including all of its officers, directors,  
18 employees, consultants, retained experts, and Outside Counsel of Record (and their  
19 support staffs).

20 2.10 Producing Party: a Party or Non-Party that produces Disclosure or  
21 Discovery Material in this action.

22 2.11 Professional Vendors: persons or entities that provide litigation support  
23 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
24 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
25 their employees and subcontractors.

26 2.12 Protected Material: any Disclosure or Discovery Material that is  
27 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’  
28 EYES ONLY.”

1           2.13 Receiving Party: a person who receives Disclosure or Discovery Material  
2 from a Producing Party.

3       3.     SCOPE

4           The protections conferred by this Stipulation and Order cover not only Protected  
5 Material (as defined above), but also (1) any information copied or extracted from  
6 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
7 Material; and (3) any testimony, conversations, or presentations by Parties or their  
8 Counsel that might reveal Protected Material. However, the protections conferred by  
9 this Stipulation and Order do not cover the following information: (a) any information  
10 that is in the public domain at the time of disclosure to a Receiving Party or becomes  
11 part of the public domain after its disclosure to a Receiving Party as a result of  
12 publication not involving a violation of this Order, including becoming part of the public  
13 record through trial or otherwise; and (b) any information known to the Receiving Party  
14 prior to the disclosure or obtained by the Receiving Party after the disclosure from a  
15 source who obtained the information lawfully and under no obligation of confidentiality  
16 to the Designating Party. Any use of Protected Material at trial shall be governed by a  
17 separate agreement or order.

18     4.     DURATION

19           The confidentiality obligations imposed by this Order shall remain in effect until a  
20 Designating Party agrees otherwise in writing or a court order otherwise directs.

21           Final disposition shall be deemed to be the later of (1) dismissal of all claims  
22 and defenses in this action, with or without prejudice; and (2) final judgment herein  
23 after the completion and exhaustion of all appeals, re-hearings, remands, trials, or  
24 reviews of this action, including the time limits for filing any motions or applications for  
25 extension of time pursuant to applicable law.

26     5.     DESIGNATING PROTECTED MATERIAL

27         5.1   Exercise of Restraint and Care in Designating Material for Protection.

28           Each Party or Non-Party that designates information or items for protection

1 under this Order must take care to limit any such designation to specific material that  
2 qualifies under the appropriate standards. The Designating Party must designate for  
3 protection only those parts of material, documents, items, or oral or written  
4 communications that qualify – so that other portions of the material, documents, items,  
5 or communications for which protection is not warranted are not swept unjustifiably  
6 within the ambit of this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations  
8 that are shown to be clearly unjustified or that have been made for an improper  
9 purpose (e.g., to unnecessarily encumber or retard the case development process or to  
10 impose unnecessary expenses and burdens on other parties) expose the Designating  
11 Party to sanctions.

12 If it comes to a Designating Party's attention that information or items that it  
13 designated for protection do not qualify for protection at all or do not qualify for the level  
14 of protection initially asserted, that Designating Party must promptly notify all other  
15 parties that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
17 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated  
18 or ordered, Disclosure or Discovery Material that qualifies for protection under this  
19 Order must be clearly so designated before the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic  
22 documents, but excluding transcripts of depositions or other pretrial or trial  
23 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each page  
24 that contains protected material. If only a portion or portions of the material on a page  
25 qualifies for protection, the Producing Party also must clearly identify the protected  
26 portion(s) (e.g., by making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents or materials available for  
28 inspection need not designate them for protection until after the inspecting Party has

1 indicated which material it would like copied and produced. During the inspection and  
2 before the designation, all of the material made available for inspection shall be  
3 deemed "CONFIDENTIAL". After the inspecting Party has identified the documents it  
4 wants copied and produced, the Producing Party must determine which documents, or  
5 portions thereof, qualify for protection under this Order. Then, before producing the  
6 specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to  
7 each page that contains Protected Material. If only a portion or portions of the material  
8 on a page qualifies for protection, the Producing Party also must clearly identify the  
9 protected portion(s) (e.g., by making appropriate markings in the margins).

10 A Party or Non-Party that makes original documents or materials available for  
11 inspection need not designate them for protection until after the inspecting Party has  
12 indicated which material it would like copied and produced. During the inspection and  
13 before the designation, all of the material made available for inspection shall be  
14 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it  
15 wants copied and produced, the Producing Party must determine which documents, or  
16 portions thereof, qualify for protection under this Order. Then, before producing the  
17 specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to  
18 each page that contains Protected Material. If only a portion or portions of the material  
19 on a page qualifies for protection, the Producing Party also must clearly identify the  
20 protected portion(s) (e.g., by making appropriate markings in the margins).

21 (b) for testimony given in deposition or in other pretrial or trial  
22 proceedings, that the Designating Party (or the non-party offering or sponsoring the  
23 testimony) identify, within 30 business days of receipt of the deposition transcript, all  
24 portions of the testimony for which protection is sought. Testimony given in deposition  
25 shall be treated provisionally as "CONFIDENTIAL" from the time of the deposition  
26 through the earlier of (i) the Designating Party's identification of the testimony to be  
27 protected; or (ii) 30 business days after the Designating Party's receipt of the  
28 deposition transcript.

1 (c) for information produced in some form other than documentary and for  
2 any other tangible items, that the Producing Party affix in a prominent place on the  
3 exterior of the container or containers in which the information or item is stored the  
4 legend "CONFIDENTIAL". If only a portion or portions of the information or item  
5 warrant protection, the Producing Party, to the extent practicable, shall identify the  
6 protected portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
8 failure to designate qualified information or items does not, standing alone, waive the  
9 Designating Party's right to secure protection under this Order for such material. Upon  
10 timely correction of a designation, the Receiving Party must make reasonable efforts to  
11 assure that the material is treated in accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
14 designation of confidentiality at any time. Unless a prompt challenge to a Designating  
15 Party's confidentiality designation is necessary to avoid foreseeable, substantial  
16 unfairness, unnecessary economic burdens, or a significant disruption or delay of the  
17 litigation, a Party does not waive its right to challenge a confidentiality designation by  
18 electing not to mount a challenge promptly after the original designation is disclosed.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
20 resolution process by providing written notice of each designation it is challenging and  
21 describing the basis for each challenge. To avoid ambiguity as to whether a challenge  
22 has been made, the written notice must recite that the challenge to confidentiality is  
23 being made in accordance with this specific paragraph of the Protective Order. The  
24 parties shall attempt to resolve each challenge in good faith and must begin the  
25 process by conferring directly (in voice to voice dialogue; other forms of communication  
26 are not sufficient) within 14 days of the date of service of notice. In conferring, the  
27 Challenging Party must explain the basis for its belief that the confidentiality  
28 designation was not proper and must give the Designating Party an opportunity to

1 review the designated material, to reconsider the circumstances, and, if no change in  
2 designation is offered, to explain the basis for the chosen designation. A Challenging  
3 Party may proceed to the next stage of the challenge process only if it has engaged in  
4 this meet and confer process first or establishes that the Designating Party is unwilling  
5 to participate in the meet and confer process in a timely manner.

6       6.3    Judicial Intervention. If the Parties cannot resolve a challenge without  
7 court intervention, the Challenging Party may file a motion challenging a confidentiality  
8 designation at any time if there is good cause for doing so, including a challenge to the  
9 designation of a deposition transcript or any portions thereof. Any motion brought  
10 pursuant to this provision must be accompanied by a competent declaration affirming  
11 that the movant has complied with the meet and confer requirements imposed by the  
12 preceding paragraph.

13       Until the Court rules on the challenge, all parties shall continue to afford the  
14 material in question the level of protection to which it is entitled under the Producing  
15 Party's designation.

## 16   7.    ACCESS TO AND USE OF PROTECTED MATERIAL

17       7.1    Basic Principles. Protected Material must be stored and maintained by a  
18 Receiving Party at a location and in a secure manner that ensures that access is  
19 limited to the persons authorized under this Order.

20       7.2    Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
21 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
22 may disclose any information or item designated "CONFIDENTIAL" only to:

23           (a) the Receiving Party's Outside Counsel of Record in this action, as  
24 well as employees of said Outside Counsel of Record to whom it is reasonably  
25 necessary to disclose the information for this litigation and who have signed the  
26 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

27           (b) Experts (as defined in this Order) of the Receiving Party to whom  
28 disclosure is reasonably necessary for this litigation and who have signed the



1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (c) the court and its personnel;

3 (d) court reporters and their staff, professional jury or trial consultants,  
4 and Professional Vendors to whom disclosure is reasonably necessary for this litigation  
5 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (e) during their depositions, witnesses in the action to whom disclosure is  
7 reasonably necessary and who have signed the “Acknowledgment and Agreement to  
8 Be Bound” (Exhibit A), **unless otherwise agreed by the Designating Party or  
9 ordered by the Court.** Pages of transcribed deposition testimony or exhibits to  
10 depositions that reveal Protected Material must be separately bound by the court  
11 reporter and may not be disclosed to anyone except as permitted under this Stipulated  
12 Protective Order.

13 (f) the author or recipient of a document containing the information or a  
14 custodian or other person who otherwise possessed or knew the information.

15 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
16 OTHER LITIGATION

17 If a Party is served with a subpoena or a court order issued in other litigation  
18 that compels disclosure of any information or items designated in this action as  
19 “CONFIDENTIAL” that Party must:

20 (a) promptly notify in writing the Designating Party. Such notification shall  
21 include a copy of the subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or order  
23 to issue in the other litigation that some or all of the material covered by the subpoena  
24 or order is subject to this Protective Order. Such notification shall include a copy of this  
25 Stipulated Protective Order; and

26 (c) cooperate with respect to all reasonable procedures sought to be  
27 pursued by the Designating Party whose Protected Material may be affected.

28 If the Designating Party timely seeks a protective order, the Party served with

1 the subpoena or court order shall not produce any information designated in this  
2 action as "CONFIDENTIAL" before a determination by the court from which the  
3 subpoena or order issued, unless the Party has obtained the Designating Party's  
4 permission. The Designating Party shall bear the burden and expense of seeking  
5 protection in that court of its confidential material – and nothing in these provisions  
6 should be construed as authorizing or encouraging a Receiving Party in this action to  
7 disobey a lawful directive from another court.

8 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN  
9 THIS LITIGATION

10 (a) The terms of this Order are applicable to information produced by  
11 a Non-Party in this action and designated as "CONFIDENTIAL". Such information  
12 produced by Non-Parties in connection with this litigation is protected by the remedies  
13 and relief provided by this Order. Nothing in these provisions should be construed as  
14 prohibiting a Non-Party from seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request,  
16 to produce a Non-Party's confidential information in its possession, and the Party is  
17 subject to an agreement with the Non-Party not to produce the Non-Party's confidential  
18 information, then the Party shall:

19 1. promptly notify in writing the Requesting Party and the Non-Party  
20 that some or all of the information requested is subject to a confidentiality agreement  
21 with a Non-Party;

22 2. promptly provide the Non-Party with a copy of the Stipulated  
23 Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
24 specific description of the information requested; and

25 3. make the information requested available for inspection by the  
26 Non-Party.

27 (c) If the Non-Party fails to object or seek a protective order from this  
28 court within 14 days of receiving the notice and accompanying information, the

1 Receiving Party may produce the Non-Party's confidential information responsive to  
2 the discovery request. If the Non-Party timely seeks a protective order, the Receiving  
3 Party shall not produce any information in its possession or control that is subject to the  
4 confidentiality agreement with the Non-Party before a determination by the court.<sup>1</sup>  
5 Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
6 of seeking protection in this court of its Protected Material.

7 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
9 Protected Material to any person or in any circumstance not authorized under this  
10 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
11 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
12 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
13 whom unauthorized disclosures were made of all the terms of this Order, and (d)  
14 request such person or persons to execute the "Acknowledgment and Agreement to Be  
15 Bound" that is attached hereto as Exhibit A.

16 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
17 PROTECTED MATERIAL

18 When a Producing Party gives notice to Receiving Parties that certain  
19 inadvertently produced material is subject to a claim of privilege or other protection, the  
20 obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
21 Procedure 26(b)(5)(B). Nothing in this Order is intended to limit the application or  
22 scope of Federal Rule of Evidence 502.

23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
25 \_\_\_\_\_

26 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of  
27 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to  
28 protect its confidentiality interests in this court.

1 person to seek its modification by the court in the future.

2       12.2 Right to Assert Other Objections. By stipulating to the entry of this  
3 Protective Order no Party waives any right it otherwise would have to object to  
4 disclosing or producing any information or item on any ground not addressed in this  
5 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
6 ground to use in evidence of any of the material covered by this Protective Order.

7       12.3 Filing Protected Material. Without written permission from the Designating  
8 Party or a court order secured after appropriate notice to all interested persons, a Party  
9 may not file in the public record in this action any Protected Material. Protected  
10 Material may only be filed under seal. A Party that seeks to file under seal any  
11 Protected Material must comply with the applicable Local Rules, General Orders, and  
12 Judge's individual rules/practices. If a Receiving Party's request to file Protected  
13 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court,  
14 Receiving Party may file the Protected Material in the public record unless otherwise  
15 instructed by the court.

16 13. FINAL DISPOSITION

17       Following the final disposition of this action, as defined in paragraph 4, each  
18 Receiving Party may return all Protected Material to the Producing Party, destroy such  
19 material, or retain such material. As used in this subdivision, "all Protected Material"  
20 includes all copies, abstracts, compilations, summaries, and any other format  
21 reproducing or capturing any of the Protected Material. Whether the Protected Material  
22 is returned, destroyed, or retained, the Receiving Party must submit a written  
23 certification to the Producing Party (and, if not the same person or entity, to the  
24 Designating Party) within 60-days of the final disposition of this action identifying (1)  
25 (by category, where appropriate) all the Protected Material that was returned,  
26 destroyed, or retained. Notwithstanding this provision, Counsel are entitled to retain an  
27 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
28 legal memoranda, correspondence, deposition and trial exhibits, expert reports,

1 attorney work product, and consultant and expert work product, even if such materials  
2 contain Protected Material. Any such archival copies that contain or constitute  
3 Protected Material remain subject to this Protective Order as set forth in Section 4  
4 (DURATION).

5 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

6 Dated: February 14, 2017

**CASPER, MEADOWS, SCHWARTZ & COOK**

7 By: /s/ Adam Carlson  
8 ADAM CARLSON, ESQ.  
9 Attorneys for Plaintiff  
10 RICHARD OWEN

11 Dated: February 14, 2017

**LEONE & ALBERTS**

12 By: /s/ Claudia Leed  
13 LOUIS A. LEONE, ESQ.  
14 CLAUDIA LEED, ESQ.  
15 Attorneys for Defendants  
16 CITY OF PINOLE and OFFICER BRECKRIDGE

17 **ORDER**

18 **PURSUANT TO THE STIPULATION OF THE PARTIES, IT IS SO ORDERED.**

19 Dated: \_\_\_\_\_

20 MAGISTRATE JUDGE SALLIE KIM  
21 UNITED STATES DISTRICT COURT  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I  
have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Northern District of California on  
[date] in the case of *Owen v. City of Pinole, et al*, 16-cv-06131-SK, I agree to comply  
with and to be bound by all the terms of this Stipulated Protective Order and I  
understand and acknowledge that failure to so comply could expose me to sanctions  
and punishment in the nature of contempt. I solemnly promise that I will not disclose in  
any manner any information or item that is subject to this Stipulated Protective Order to  
any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Northern District of California for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this  
action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with this  
action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

[printed name]

Signature: \_\_\_\_\_